



Dan Bucks
Director

Montana Department of Revenue

SENATE TAXATION

EXHIBIT NO.

13

DATE

3.24.11


NO.

SB 406



Brian Schweitzer
Governor

To: Members of the Senate Taxation Committee

From: Dan Bucks, Director of Revenue 

Subject: Constitutional Convention Intent Regarding Tax Appeals

As discussed at the public hearing on SB 406, attached is the Constitutional Convention transcript (page 1490) concerning the tax appeal procedures explaining the intent underlying the current tax appeals provision in the Montana Constitution, Article VIII, Section 7. It is clear from the convention transcript that convention delegates intended that the legislature to create a "body" to handle tax appeals and that body was to be separate and independent of the tax agency or the courts. Here is the key quote from the convention transcript recommending the final adopted appeals provision:

The committee feels that the Montana taxpayer needs **some avenue of recourse, besides the tax administrators or courts**, to evaluate his tax treatment. We feel this proposed section will enable the Legislature to set up the proper machinery at a local level and **give the taxpayer an independent body to which he can appeal**. (Emphasis added.)

It is significant that the Legislature following the adoption of the Constitution created the State Tax Appeals Board to implement Article VIII, Section 7, providing evidence of the contemporaneous understanding of the constitutional intent.

It would appear that SB 406 run counter to this intent because it bypasses the State Tax Appeal Board—an "independent body" separate from the Department and the Courts—and places decision-making in the appeals process back with the Department of Revenue, in a mandatory mediation procedure, and with the courts.

Garlington Aye
 Graybill Aye
 Gysler Aye
 Habedank Aye
 Hanson, R.S. Aye
 Hanson, R. Aye
 Harbaugh Aye
 Harlow Aye
 Harper Aye
 Harrington Aye
 Heliker Aye
 Holland Excused
 Jacobsen Aye
 James Aye
 Johnson Nay
 Joyce Aye
 Kamhoot Nay
 Kelleher Aye
 Leuthold Aye
 Loendorf Aye
 Lorello Aye
 Mahoney Nay
 Mansfield Nay
 Martin Aye
 McCarvel Aye
 McDonough Aye
 McKeon Aye
 McNeil Aye
 Melvin Aye
 Monroe Aye
 Murray Aye
 Noble Aye
 Nutting Nay
 Payne Aye
 Pemberton Aye
 Rebal Aye
 Reichert Aye
 Robinson Aye
 Roeder Aye
 Rollins Aye
 Romney Aye
 Rygg Aye
 Scanlin Absent
 Schiltz Aye
 Siderius Aye
 Simon Nay
 Skari Aye
 Sparks Aye
 Speer Aye
 Studer Nay
 Sullivan Aye
 Swanberg Nay
 Toole Aye
 Van Buskirk Aye
 Vermillion Aye

Wagner Aye
 Ward Aye
 Warden Aye
 Wilson Nay
 Woodmansey Aye

CLERK SMITH: Mr. Chairman, 76 voting Aye, 14 voting No.

CHAIRMAN GRAYBILL: 76 having voted Aye and 14 having voted No, Section 6, as amended, of the committee proposal is adopted. Will the clerk please read Section 7 in its entirety. Just a moment.

Mrs. Van Buskirk, for what purpose do you rise?

DELEGATE VAN BUSKIRK: Mr. Chairman. I'd like to express my feelings that I feel real proud of this group, that we're representing Montana.

CHAIRMAN GRAYBILL: Very well. All right, now the clerk will read Section 7.
 Mr. Rygg.

DELEGATE RYGG: Mr. Chairman, I wonder if it would speed up anything. I'm going to move to amend Section 7 by deleting it in its entirety and to supply the material which is on your desk. Now, I don't know if he still must read it or not, but I do plan to move to amend it by deleting it in its entirety and substituting the short amendment, which should be on your desks.

CHAIRMAN GRAYBILL: Mr. Rygg, the Chair and the clerk did not receive your material—or at least the Chair didn't. Very well, may I have your attention? The Chair will ask if there's any objection if we do not read Section 7 of the committee report and allow the amendment without reading that page and a half of material. Is there anyone [who] objects? Very well. Hearing no objection, Mr. Rygg, may the Chair direct the clerk to read your amendment to Section 7?

DELEGATE RYGG: Do, sir.

CHAIRMAN GRAYBILL: Very well. Please read the amendment.

CLERK SMITH: "Mr. Chairman. I move to amend Section 7 of the Revenue and Finance Committee majority report, starting on line 17 of page 12 through and including line 3 on page 14, by deleting the material contained therein and inserting in lieu thereof the following new material: 'Sec-

tion 7. Tax appeals. The Legislature shall provide taxpayer independent appeal procedures for appraisals, assessments and equalization grievances and tax grievances. The Legislature shall include therein a review procedure at the county or local governmental unit level.' Signed: Rygg."

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I suppose all you committees probably had the same trouble we did in meeting our deadline. And about 11 o'clock one night, we were still wrestling with this section. We did have quite an involved section. At the time, there were some of us on the committee who felt that perhaps this was too involved and really too much of a legislative article to be contained in the Constitution. However, because of the lateness of the hour and the nearness of the deadline, we did feel that we had to submit it. Since then, we have met on several occasions and discussed this particular section. We are not changing our concept at all, because we think that this concept of establishing independent tax review is something that is needed. Under the present tax administration program, the same governmental bodies—that is, the County Boards of Equalization and the State Boards of Equalization—that establish the revenue policies and procedures then also sit in judgment when a person wants to appeal the implementation of these policies and procedures. The testimony heard during the past few weeks indicates this procedure does not guarantee an independent, nonpartial, objective review of tax decisions. The committee feels that the Montana taxpayer needs some avenue of recourse, besides the tax administrators or the courts, to evaluate his tax treatment. We feel this new proposed section will enable the Legislature to set up the proper machinery at a local level and give the taxpayer an independent body to which he can appeal. Again I say, we thought we had spelled it out in too much detail. We had to provide for five; maybe they don't need that many. We are very interested in having it on the local level. And we feel that the Legislature is the only one that can do this. Now, it is the thinking—and I would say that Mr. Wagner and Mr. McDonough have been instrumental in working on this particular section. It is their feeling that the—this board or person or whatever the unit is who is going to appeal this would have the right to go through the records, naturally, to establish what had been done and what hadn't been done, so that they would have the authority any other person does, at

any rate, to see all the records. And that they could do this. So we strongly feel that the taxpayer has the right to this independent tax review procedure. So again I reiterate, we have in no way changed our concept. We just feel that we were too legislative in our former Section 7, and now we recommend this shortened plan to this group. Thank you, Mr. Chairman.

CHAIRMAN GRAYBILL: Is there debate or discussion on the committee's proposed Section 7—amended Section 7? If not, members of the committee, you have before you for your consideration, upon the motion of Mr. Rygg, the Chairman of the committee, that when this committee does arise and report, after having had under consideration the amendment they propose to Section 7 of the majority report, that this body recommend that the same be adopted. So many as shall be in favor of that motion, say Aye.

DELEGATES: Aye.

CHAIRMAN GRAYBILL: Opposed, No.
(No response)

CHAIRMAN GRAYBILL: Section 7 is amended as adopted. Will the clerk please read Section 8.

CLERK SMITH: "Section 8. State indebtedness. No state debt shall be created unless authorized by three-fifths vote of the members of both houses of the Legislative Assembly. State debts cannot be created to over—to cover deficits incurred when appropriations exceed anticipated revenue during any budget period." Section 8, Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: Mr. Chairman. I move that when this committee does arise and report, after having had under consideration Section 8 of Proposal Number 7, it recommend the same be adopted.

Mr. Chairman.

CHAIRMAN GRAYBILL: Mr. Rygg.

DELEGATE RYGG: The present Constitution restricts the state to a hundred thousand dollar debt limit. Dollar limits do not reflect inflation, so the committee felt the limit should not be